

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/6/2023

VICTORIA DICKS, on behalf of herself and all others similarly situated,

Plaintiff,

-against-

1canoe2, LLC,

Defendant.

1:22-cv-7921-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff initiated this action by filing a complaint on September 16, 2022. [ECF No. 1].

An affidavit of service of summons and complaint was filed on the docket on October 7, 2022.

[ECF No. 5]. According to that summons, Defendant's response to the complaint was due

October 28, 2022. [ECF No. 5]. No response was filed, and Plaintiff sought and obtained a

certificate of default with respect to Defendant from the Clerk of the Court on January 3, 2023.

[ECF No. 11]. Plaintiff took no further action, however, and did nothing further to prosecute her case.

As a result, the Court ordered that any motion for entry of a default judgment with respect to Defendant must be filed by April 3, 2023. ECF No. 12. The Court warned Plaintiff that "failure to move for a default judgment by April 3, 2023, may result in dismissal of this action for failure to prosecute, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure."

ECF No. 12 (citing *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001)). To date, no motion for default judgment has been filed and Plaintiff has not prosecuted this case.

Accordingly, IT IS HEREBY ORDERED that the above-captioned action is discontinued for failure to prosecute without costs to any party and without prejudice to restoring the action to this Court's calendar if the application to restore the action is made by May 8, 2023. If no such

application is made by that date, today's dismissal of the action is with prejudice. *See LeSane*, 239 F.3d at 209 (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630 (1962)).

**SO ORDERED.**

**Date:** April 6, 2023  
New York, NY

Mary Kay Vyskocil  
**MARY KAY VYSKOCIL**  
United States District Judge